

PLAINTIFFS' SUMMARY JUDGMENT OPPOSITION

EXHIBIT A-17

From: [Torvik, Scott \(TAES\)](#)
To: [Kristopher L. Koster](#)
Cc: [Scott A Coakley](#); [Stella S. Carroll](#); [CHRISTOPHER C. WEARNE](#); [Andrea S. Jendrusina](#); [JASON R. DURAND](#); [Jerome Kostielney](#); [Michael W. Judd 1](#); [Chad L. Whitman](#); [ADAM C. GREENE](#); [Dustin J. Daggett](#); [Roman Cline](#); [Cline, Roman \(TAES\)](#); [Kam Moree](#)
Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans - DRE Inspection by TAES
Date: Monday, March 27, 2023 8:04:27 AM

##CAUTION##: This email originated from outside of CMS/CE.

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Hi Kris,

TAES is in receipt of CEC's 3/21/2023 email, '2023 Spring Outage Schedule and TAES Work Plans – DRE Inspection by TAES'. In response, we want to provide the following clarifications and comment:

1. It was CEC and not TAES, who planned for the TAES DRE inspection activities to take place in the 2023 Spring outage schedule.
2. TAES 3/9/2023 email stated TAES's position that DRE inspections are not necessary during the 2023 Spring outages, and TAES continues to maintain the same position. Also, as previously stated, If CEC was to install 1 or more draft tube platforms then TAES would appreciate the opportunity to visually inspect the DRE(s).

In addition to the above, TAES objects to CEC's latest inspection conditions as arbitrary, unreasonable, and aimed to run interference, whether for DRE inspections or other TAES warranty related site work.

TAES reserves all available rights and remedies whether under contract, law or equity.

Thanks,
Scott

From: Kristopher L. Koster <kris.koster@cmsenergy.com>
Sent: Tuesday, March 21, 2023 7:05 AM
To: Torvik, Scott (TAES) <scott.torvik@toshiba.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll <STELLA.CARROLL@cmsenergy.com>; CHRISTOPHER C. WEARNE <CHRISTOPHER.WEARNE@cmsenergy.com>; Andrea S. Jendrusina <Andrea.Jendrusina@cmsenergy.com>; JASON R. DURAND <JASON.DURAND@cmsenergy.com>; Jerome Kostielney <Jerome.Kostielney@cmsenergy.com>; Michael W. Judd 1 <Michael.W.Judd@cmsenergy.com>; Chad L. Whitman <Chad.Whitman@cmsenergy.com>; ADAM C. GREENE <ADAM.GREENE@cmsenergy.com>; Dustin J. Daggett <Dustin.Daggett@cmsenergy.com>; Roman Cline <Roman_Cline@hotmail.com>; Cline, Roman

(TAES) <Roman.Cline@toshiba.com>; Kam Moree <Kam.Moree@cmsenergy.com>

Subject: 2023 Spring Outage Schedule and TAES Work Plans - DRE Inspection by TAES

Hi Scott,

To support TAES' requested DRE inspections, we have reviewed the current schedule and identified the following DRE inspection windows which support the durations requested in your attachment:

- Unit 2 – 3 shifts – 4/14/2023 from 0700-1700, 4/15/2023 from 0700-1700, and 4/16/2023 from 0700-1700
- Unit 1 – 2 shifts – 4/18/2023 from 0700-1700 and 4/19/2023 from 0700-1700
- Unit 4 – 3 shifts – 5/4/2023 from 0700-1700, 5/5/2023 from 0700-1700, and 5/6/2023 from 0700-1700
- Unit 3 – 2 shifts – 5/7/2023 from 0700-1700 and 5/8/2023 from 0700-1700
- Unit 5 – 3 shifts – 5/25/2023 from 0700-1700, 5/26/2023 from 0700-1700, and 5/27/2023 from 0700-1700
- Unit 6 – 2 shifts – 5/30/2023 from 0700-1700 and 5/31/2023 from 0700-1700

The inspections will be supported in compliance with the following provisions:

1. TAES identifies all individuals coming onsite (including their titles / roles) to perform the DRE inspections – must be provided no later than 3/29/2023 @ 5PM EST.
2. All TAES individuals identified as performing the inspections must arrive onsite on 4/13/2023 at 10:00AM EST for site safety training in order to sign onto working clearance and be escorted entrants in the confined space (except Steve Crispin and Jason Morgan who just completed the training).
3. TAES must provide an inspection plan no later than 3/29/2023 @ 5PM EST which outlines its inspection areas and methods of inspection.
4. TAES individuals will be escorted while onsite.
5. We expect and request that those TAES inspection results and findings will be shared with CEC through applicable NCR responses.

Thanks,

Kris Koster

Project Manager

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From: Torvik, Scott (TAES) <Scott.Torvik@toshiba.com>
Sent: Thursday, March 9, 2023 11:07 AM
To: Kristopher L. Koster <kris.koster@cmsenergy.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll <STELLA.CARROLL@cmsenergy.com>; CHRISTOPHER C. WEARNE <CHRISTOPHER.WEARNE@cmsenergy.com>; Andrea S. Jendrusina <Andrea.Jendrusina@cmsenergy.com>; JASON R. DURAND <JASON.DURAND@cmsenergy.com>; Jerome Kostielney <Jerome.Kostielney@cmsenergy.com>; Michael W. Judd 1 <Michael.W.Judd@cmsenergy.com>; Chad L. Whitman <Chad.Whitman@cmsenergy.com>; ADAM C. GREENE <ADAM.GREENE@cmsenergy.com>; Dustin J. Daggett <Dustin.Daggett@cmsenergy.com>; Roman Cline <Roman_Cline@hotmail.com>; Cline, Roman (TAES) <Roman.Cline@toshiba.com>
Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans

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Hi Kris,

Attached find updated TAES schedule to include –

ABB UNL14300 converter upgrades – ABB has confirmed field engineer availability for latest CEC schedule date changes:
Units 1 & 2 - 4/17 - 4/21/2023
Units 3 & 4 - 5/8 - 5/12/2023
Units 5 & 6 - 6/12 - 6/16/2023

U2 & U6 Stator air cooler ‘B’ leaks – CEC has rejected TAES recommendations for cooler leak inspections, evaluation, and repair. So, we’ve removed the TAES U2 & U6 inspection placeholders from the schedule. TAES requests the opportunity to inspect coolers if removed by CEC. We also, await previously requested cooler operational data and maintenance records from CEC.

U1 – U6 DRE inspections – As previously communicated, TAES/ESS does not consider it necessary to inspect DREs during this outage and therefore TAES will not be perform DT installations/removals. All DT platform installation and removal schedule activities which CEC had previously assigned to TAES have been changed to CEC activities. If CEC elects to install DT platforms on 1 or more units TAES would appreciate the opportunity to visually inspect the DRE(s). Please keep us updated.

TAES will have a representative on site during ABB exciter modifications. However, considering the limited TAES work scope now planned, our expectation is that the ABB field engineer will sign-on to CEC's exciter clearance as a worker while performing those converter upgrades.

Let me know if you have any questions or if we need to discuss any of these revisions further.

Thanks,
Scott

From: Torvik, Scott (TAES)
Sent: Friday, February 10, 2023 4:54 PM
To: Kristopher L. Koster <kris.koster@cmsenergy.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll <STELLA.CARROLL@cmsenergy.com>; CHRISTOPHER C. WEARNE <CHRISTOPHER.WEARNE@cmsenergy.com>; Andrea S. Jendrusina <Andrea.Jendrusina@cmsenergy.com>; JASON R. DURAND <JASON.DURAND@cmsenergy.com>; Jerome Kostielney <Jerome.Kostielney@cmsenergy.com>; Michael W. Judd 1 <Michael.W.Judd@cmsenergy.com>; Chad L. Whitman <Chad.Whitman@cmsenergy.com>; ADAM C. GREENE <ADAM.GREENE@cmsenergy.com>; Dustin J. Daggett <Dustin.Daggett@cmsenergy.com>; Roman Cline <Roman_Cline@hotmail.com>; Cline, Roman (TAES) <Roman.Cline@toshiba.com>
Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans

Hi Kris,

TAES is in receipt of CEC's 2/7/2023 email 'RE: 2023 Spring Outage Schedule and TAES Work Plans' and provides the following preliminary responses:

ABB excitation snubber circuit modification –

- It is our understanding that ABB intends to remain at site to witness exciter post-modification performance on start-up. However, TAES has communicated CEC's request that ABB reschedule their personnel to perform modifications at the beginning of unit outages. TAES will forward ABB's response when received.
- As for CEC's request for additional snubber circuit modification schedule detail, in TAES' opinion ABB's modification procedure provides sufficient detail. So, please note the specific modification work steps CEC wants included and TAES will work to update schedule accordingly.

Leaking U2 & U6 stator air coolers –

- TAES/ESS is working to evaluate cause of U2 & U6 stator air cooler leaks prior to upcoming Spring 2023 outage to determine whether or not subject leaks are valid TAES warranty claims or an Owner responsibility. Unfortunately, CEC's 2/3/2023 NCR responses and 2/7/2023 email provide no additional detail to further those pre-outage leak evaluation efforts.

- Reference TAES NCR-788 (U2) and NCR-855 (U6) updates and requests for CEC data, records, and confirmations to allow TAES/ESS to make further evaluation and pre-Spring 2023 outage planning progress.

DREs –

- CEC's 1/24/2023 email '2023 Spring Outage Schedule and TAES Work Plans' directs TAES to install draft tube platforms on U1 – U6 for CEC and TAES/ESS DRE inspections.
- Based on U1 – U6 DRE repair and inspection results through the 2022 Spring outages, including subsequent Oct-2022 U5 DRE pocket cover weld repairs, TAES/ESS do not consider DRE warranty inspections during 2023 Spring outages to be necessary or our contractual obligation to perform.
- Should CEC elect to perform DRE inspections during 2023 Spring outages we expect and request that those CEC inspection results and findings will be shared with TAES/ESS.

Other –

- TAES/ESS are reviewing other warranty works which may be recommended considering the 2 week availability per unit.

Let me know if you'd like to schedule a call to discuss any of these topics in greater detail.

Regards,
Scott

From: Kristopher L. Koster <kris.koster@cmsenergy.com>
Sent: Tuesday, February 7, 2023 8:46 AM
To: Torvik, Scott (TAES) <scott.torvik@toshiba.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll <STELLA.CARROLL@cmsenergy.com>; CHRISTOPHER C. WEARNE <CHRISTOPHER.WEARNE@cmsenergy.com>; Andrea S. Jendrusina <Andrea.Jendrusina@cmsenergy.com>; JASON R. DURAND <JASON.DURAND@cmsenergy.com>; Jerome Kostielney <Jerome.Kostielney@cmsenergy.com>; Michael W. Judd 1 <Michael.W.Judd@cmsenergy.com>; Chad L. Whitman <Chad.Whitman@cmsenergy.com>; ADAM C. GREENE <ADAM.GREENE@cmsenergy.com>; Dustin J. Daggett <Dustin.Daggett@cmsenergy.com>; Roman Cline <Roman_Cline@hotmail.com>; Cline, Roman (TAES) <roman.cline@toshiba.com>
Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans

Hi Scott,

I am providing the Owner's preliminary responses (in blue) to your email responses (copied below in red for clarity):

FROM S. TORVIK 1/27/2023 EMAIL:

1. TAES access to CEC schedule – I've asked Roman Cline to confirm he can access CEC's schedule in Loadspring. We'll report back if there are any issues.

CEC has not heard back and therefore assumes there is no issue with access.

FROM S. TORVIK 1/27/2023 EMAIL:

2. TAES outage work scopes –

- ABB excitation snubber circuit modification – ABB's snubber circuit modification procedure was previously uploaded to the NCRs. Last week we received associated ABB hardware at our warehouse and will now arrange site delivery. ABB had tentatively schedule field engineer to perform site modifications during the weeks of 4/24, 5/22, and 6/19/2023. Based on CEC's schedule, it looks like units will be available for ABB field engineer to perform modifications during the weeks of 4/3, 4/24, and 5/15/2023. Please confirm CEC will provide access to the exciters for snubber circuit modifications during those weeks and we'll work to adjust and fix ABB field engineer site visits according.

FROM S. TORVIK 2/2/2023 EMAIL:

As requested, attached find a copy of TAES' update to CEC's 2023 Spring outage schedule with TAES warranty work scope placeholders for:

- (i) U1-U6 static excitation UNL14300 converter upgrades by ABB

The Owner acknowledges receipt of TAES / ABB's modification procedure for the snubber circuits and will formally respond shortly.

Delivery of the ABB parts can be coordinated with Mike Judd. Please arrange day / time for delivery.

Please adjust ABB's technician schedules to support the following work windows to perform the modifications to all units:

- Unit 1: 4/4 – 4/8/2023
- Unit 2: 4/4 – 4/8/2023
- Unit 3: 4/25 – 4/29/2023
- Unit 4: 4/25 – 4/29/2023
- Unit 5: 5/16 – 5/20/2023
- Unit 6: 5/16 – 5/20/2023

Additionally, we need detailed schedule activities in support of this work (and any other work) included in TAES' schedule.

FROM S. TORVIK 1/27/2023 EMAIL:

- Replacement of leaking U2 stator air cooler – TAES recommends to send the non-contractual spare stator air cooler, presently in CEC's possession, to 3rd party shop (National Heat Exchange in Youngstown, OH) for inspection, repair, and retesting. This

was an option presented in our earlier NCR response. TAES would then plan to swap this cooler with the leaking cooler during upcoming outage. This will allow leaking cooler to be inspected to determine cause of leak. TAES is working to submit an update and operational data information request to subject NCR within the next week. Please confirm CEC will make the non-contractual spare cooler available for to TAES pick-up and transport to National Heat Exchange who are standing by.

FROM S. TORVIK 2/2/2023 EMAIL:

As requested, attached find a copy of TAES' update to CEC's 2023 Spring outage schedule with TAES warranty work scope placeholders for:

- (ii) TAES inspection U2 and U6 'B' stator air coolers.

The Owner replied to TAES on 12/1/2022 in NCR-00788 (which was created on 8/26/2022) which stated:

"The Owner requests that TAES provide detailed plans and schedules reflecting a solution for Owner consideration. The Owner expects this to reflect one of two options: 1. Ship the damaged, on-site (spare) cooler unit for factory cleaning, inspection, repair, gasket replacement and other necessary refurbishment to restore it to fully functional and operationally ready condition, including pressure testing and return to site; or 2. Procure, test and ship a new, replacement cooler unit to site.

The solution shall correct the failed Unit 2 Cooler B during the upcoming Spring 2023 Outage with a new or refurbished cooler unit.

The Owner notes that a leak was discovered at Unit 6 Cooler B and a separate NCR will be issued for this cooler with similar follow-up actions to be taken by TAES. The failed Unit 2 Cooler B and Unit 6 Cooler B shall be removed and shipped to the factory for root cause inspection to determine failure mode (or modes) of the cooler. TAES shall provide a report of the root cause investigation, with recommendations for short term mitigating measures and long-term corrective actions for all LPS unit generator stator air coolers. All work for either option is understood to be warranty work performed at TAES expense and shall receive Owner approval prior to execution."

The Owner had not heard back from TAES until your 1/27/2023 email – which did not include detailed plans and a schedule suitable for Owner review and approval. On 2/1/2023, TAES revised its approach in its NCR response, copied from NCR-00855, as follows:

"2023-02-01 TAES: Based on information provided by CEC to date, TAES & ESS cannot confirm whether or not the root cause of the U6 B air cooler leak is similar to the U2 B air cooler leak. Please confirm when CEC can provide site access and escort for a TAES representative to visually inspect and photograph U6 B air cooler leak area to allow further evaluation by TAES & ESS. Also, please provide Ovation/DAS data for all U6 stator winding RTDs, air cooler inlet RTDs, and air cooler outlet RTDs for the following 1 month periods: July 2018, January 2019, July 2019, January 2020, July 2020, January 2021, July 2021, January 2022, and July 2022. This temperature data will allow review of cooler performance over time. JM"

TAES' revised approach provided in the 2/1/2023 NCR response and in your 2/2/2023 email to perform "inspection" of the already documented defective coolers does not further the resolution of this warranty issue. The Owner has responded to the NCRs accordingly, with example language copied below from NCR-00855:

"2023-02-03 CEC: TAES' response fails to provide a proposed plan and schedule for Owner review to address this warranty claim. The Owner has already proven failure of the component in service through the attachment in the NCR (the photo of water leaking from the cooler) and has removed it from service. No further testing is warranted to demonstrate equipment failure. Subsequent testing to confirm root cause and required repairs shall be performed while undergoing refurbishment. As previously requested, TAES shall submit a plan and a schedule to the Owner that is inclusive of engineering, procurement, construction, and post maintenance testing activities for review and approval. Perform all work necessary to correct the non-conformance once approved. Develop any and all detailed maintenance instructions to support maintenance of the equipment to ensure 30-year life can be achieved per the IO&M manual requirements included in the Contract. TAES shall ensure all components are on-site (1) month before the Unit 6 outage starts. Following completion of the work, TAES shall respond to this NCR with explicit details and documentation associated with the work and provide any additional recommended repairs it intends to make. If TAES does not provide the plan and detailed schedule promptly which are acceptable to the Owner as an effort to fully remedy this issue, then the Owner will consider the inaction or failure to properly address the issue as refusal to complete the corrective work and the Owner will take steps to self perform this scope and back charge TAES accordingly per terms of the Contract. (ACG)"

It appears TAES would have liked to proceed with option 1 as identified on 12/1/2022, but then apparently withdrew that action in the most recent emails and NCR responses.

Notwithstanding, the Owner is accepting in concept of TAES' original suggestion to ship the air cooler onsite to National Head Exchanger for refurbishment (not inclusive of tube plugging or other means of degrading its performance, unless utilized only as an interim measure while replacement coolers are manufactured). In the event that TAES fails to promptly provide such detailed plans and schedules for performing any and all work to correct these nonconformances, then the Owner will consider the inaction or failure to properly and promptly address the issue as refusal to complete the corrective work, and the Owner will take steps to self perform this scope and back charge TAES accordingly per Owner's rights under the Contract.

The Owner awaits an NCR response for both units which provide detailed plans in addition to detailed P6 schedules for further review. Please respond to the NCRs accordingly, including the date and time that TAES wishes to pick-up the air cooler located onsite.

FROM S. TORVIK 1/27/2023 EMAIL:

- DRE – We've forwarded your 1/24 email to ESS and await ESS direction on DRE activity planning for upcoming outages. We note CEC's short (2 day per unit) durations for TAES to inspect DREs.

FROM S. TORVIK 2/2/2023 EMAIL:

Note, ESS has confirmed they do not plan to inspect DREs as part of the above warranty work scope in the upcoming outages so TAES will not be installing draft tube platforms.

The Owner continues to be dissapointed with TAES' lack of progress in planning to address long-outstanding DRE issues. The majority of NCRs related to the DREs have resided with TAES for action and/or input since June 2022 or before, without action. TAES has known for months that outages would be occurring in April through June of this year, during which warranty work could take place, and that TAES needed to supply detailed planning information for warranty work in advance of the outages.

Yet, from your January 27 email, it appears that TAES had not even begun planning warranty work on the DREs. Now you assert, without explanation, the ESS will not perform any such work. Please immediately advise why ESS will not address any of DRE-related NCRs during the upcoming outage period. Especially given that TAES and ESS continue to review "if there are other warranty work scopes which can be performed," we need to understand why no DRE work will be performed. TAES's failures to assemble plans sufficiently in advance of outages has been an ongoing challenge for several years, with numerous communications from the Owner providing and reinforcing its outage planning expectations of TAES. Despite that, the Owner has consistently been required to prompt TAES for plans in advance of outages – with this outage being no different – frequently leading to late and inadequate plans and schedules from TAES.

The Owner notes that the total outage work window duration is 14 days, inclusive of all draft tube platform installation and removal efforts (nominally a week's effort), and accounts for non-destructive examination and all parties' respective inspections.

Of additional note and clarification, the current schedule affords the Owner only 1 day of DRE inspections following NDE report completion, whereas TAES is provided with 2 days and the additional benefit of a 1 day pre-read of the NDE report beforehand.

FROM S. TORVIK 1/27/2023 EMAIL:

- Other – We're reviewing other warranty works which may be recommended considering the 2 week availability per unit.
- 3. Work scope freeze deadlines – A U1 & U2 work scope freeze date of 1/27/2023 is unrealistic as it allows us only 3 days to consider the actual confirmed outage dates and latest CEC requirements.

FROM S. TORVIK 2/2/2023 EMAIL:

TAES and ESS are reviewing if there are other warranty work scopes which can be performed within the 14 day TAES Outage Windows planned by CEC and we'll advise asap of any recommended additional work scopes.

Over the past several months, the Owner has repeatedly requested that TAES provide plans and schedules for correction of defective work, including during the upcoming spring outage. TAES has been aware of the dates of the spring outage since at least October of last year. This schedule and timeline is consistent with prior outages. TAES has had ample time to prepare plans and detailed schedules purusant to prior Owner requests to support this request.

Examples of the requests for plans and schedules from TAES (in addition to my 1/24/2023 email) may be found in NCR-00788 on 12/1/2022 (copied above) and from NCR-00849 on 12/7/2022 (below), among many other NCRs:

"...Provide inspection criteria and detailed repair procedures into the pump-turbine O&M manual as required by the Contract for the re-designed components. TAES shall supply a plan and a schedule to the Owner for approval that is inclusive of engineering, procurement, construction, and post maintenance testing activities for review. Perform all work necessary to correct the non-conformance once approved. If TAES does not provide the plan and detailed schedule by 12/30/2022 which are acceptable to the Owner as an effort to fully remedy this issue, then the Owner will consider the inaction or failure to properly address the issue as refusal to complete the corrective work and the Owner will take steps to self-perform this scope and back charge TAES accordingly per terms of the Contract."

The Owner has not received the detailed plans and schedules necessary to approve TAES' potential work, with the very limited exception of the ABB snubber circuit modification procedure – which, for the record, also lacked supporting schedule detail.

Due to TAES' lack of prompt and complete responses to the Owners numerous and repeated requests, the Owner has been left with no other alternative than to make other plans to remedy TAES' deficient work – with full intent of back charging TAES according to its rights under the Contract.

FROM S. TORVIK 1/27/2023 EMAIL:

4. **Owner wicket gate seal replacement – Wicket gate seal replacement is a routine Owner maintenance activity. We don't understand your comments on this activity.**

TAES has been notified of numerous wicket gate (WG) intermediate seal failures in several units and requested investigation and planning for resolution – with limited or no action by TAES to date (examples: NCR-00628 from 9/16/2020; NCR-00629 from 9/29/2020; NCR-00754 from 3/22/2022; NCR-00858 from 1/24/2023; NCR-00859 from 1/24/2023; NCR-00860 from 1/24/2023). These are not the WG end seals in the spiral case.

Due to TAES' lack of prompt and complete responses to the Owners numerous and repeated requests, the Owner has been left with no other alternative than to make other plans to remedy TAES' deficient work – with full intent of backcharging TAES according to its rights under the Contract.

For purposes of reinforcing requirements for TAES to perform corrective work (previously reinforced in my 1/24/2023 email):

Corrective work plans to address defective work/NCRs must be prepared and approved by the Owner. In the event that TAES has not yet developed, submitted to the Owner for review, and received approval by the Owner of such plan(s), please perform the following in the P6 schedule which must comply with applicable milestones/deadlines associated with the unit that the work will

be performed on:

- Add the activities (and logic) to the P6 schedule to identify TAES' intent to perform the scope prior to the scope freeze date.
- Add appropriate detail (and logic / resources) to the P6 schedule supporting the physical work in accordance with the draft and/or approved corrective work plans. Final work activities must reflect the approved plan and be updated prior to the deadline identified below.
- For corrective work plans which are not yet approved, add activities (and logic) to the P6 schedule which define corrective work plan development and submittal and Owner review/approval. Prepare corrective work plans in an expeditious manner and submit by TAES to the Owner for review. TAES' plans for the preparation of the plans must account for the contractual review duration (minimum of 21 days) and should consider additional revisions to address comments from the Owner. Requests for the Owner to expedite reviews may be considered but are not guaranteed.
- Add activities and logic to the P6 schedule (by supplier and by lead time/delivery date) for any material procurement to support the outage needs.

All plans must be approved at least 1 month prior to the outage start date, or the same date for which all materials must be onsite to support the work, unless an exception is otherwise requested in writing by TAES and granted by the Owner in writing, which remains at the sole discretion of the Owner.

Thanks,

Kris Koster
Project Manager

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Enterprise Project Management
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kris.koster@cmsenergy.com*

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From: Torvik, Scott (TAES) <Scott.Torvik@toshiba.com>
Sent: Thursday, February 2, 2023 8:31 PM
To: Kristopher L. Koster <kris.koster@cmsenergy.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll

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Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans

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clicking links/attachments.**

Hi Kris,

As requested, attached find a copy of TAES' update to CEC's 2023 Spring outage schedule with TAES warranty work scope placeholders for: (i) U1-U6 static excitation UNL14300 converter upgrades by ABB and (ii) TAES inspection U2 and U6 'B' stator air coolers. Also attached find corresponding TAES 876 Form.

Note, ESS has confirmed they do not plan to inspect DREs as part of the above warranty work scope in the upcoming outages so TAES will not be installing draft tube platforms.

TAES and ESS are reviewing if there are other warranty work scopes which can be performed within the 14 day TAES Outage Windows planned by CEC and we'll advise asap of any recommended additional work scopes.

Regards,
Scott

From: Torvik, Scott (TAES)
Sent: Friday, January 27, 2023 9:53 AM
To: Kristopher L. Koster <kris.koster@cmsenergy.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll
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(roman.cline@toshiba.com) <roman.cline@toshiba.com>

Subject: RE: 2023 Spring Outage Schedule and TAES Work Plans

Hi Kris,

TAES is in receipt of your 1/24/2024 email regarding Spring 2023 outage preparations. Below find TAES' preliminary responses:

1. TAES access to CEC schedule – I've asked Roman Cline to confirm he can access CEC's schedule in Loadspring. We'll report back if there are any issues.

2. TAES outage work scopes –

- ABB excitation snubber circuit modification – ABB's snubber circuit modification procedure was previously uploaded to the NCRs. Last week we received associated ABB hardware at our warehouse and will now arrange site delivery. ABB had tentatively schedule field engineer to perform site modifications during the weeks of 4/24, 5/22, and 6/19/2023. Based on CEC's schedule, it looks like units will be available for ABB field engineer to perform modifications during the weeks of 4/3, 4/24, and 5/15/2023. Please confirm CEC will provide access to the exciters for snubber circuit modifications during those weeks and we'll work to adjust and fix ABB field engineer site visits according.
- Replacement of leaking U2 stator air cooler – TAES recommends to send the non-contractual spare stator air cooler, presently in CEC's possession, to 3rd party shop (National Heat Exchange in Youngstown, OH) for inspection, repair, and retesting. This was an option presented in our earlier NCR response. TAES would then plan to swap this cooler with the leaking cooler during upcoming outage. This will allow leaking cooler to be inspected to determine cause of leak. TAES is working to submit an update and operational data information request to subject NCR within the next week. Please confirm CEC will make the non-contractual spare cooler available for to TAES pick-up and transport to National Heat Exchange who are standing by.
- DRE – We've forwarded your 1/24 email to ESS and await ESS direction on DRE activity planning for upcoming outages. We note CEC's short (2 day per unit) durations for TAES to inspect DREs.
- Other – We're reviewing other warranty works which may be recommended considering the 2 week availability per unit.

3. Work scope freeze deadlines – A U1 & U2 work scope freeze date of 1/27/2023 is unrealistic as it allows us only 3 days to consider the actual confirmed outage dates and latest CEC requirements.

4. Owner wicket gate seal replacement – Wicket gate seal replacement is a routine Owner maintenance activity. We don't understand your comments on this activity.

Finally, CEC's arbitrary and unrealistic deadlines not only demonstrate CEC's bad faith, but also provide clear and convincing evidence of CEC's intention to interfere with TAES' work and prejudice TAES' good faith efforts to comply with its obligations under the contract. TAES will continue to

comply with such obligations as it has done since contract signature. TAES reserves all rights, claims, and remedies in the contract, at law or equity based on CEC's actions. Any response or performance of any work by TAES as requested by CEC is not an admission or waiver of such rights, claims, and remedies.

Please give me a call if you'd like to discuss any points in greater detail.

Regards,
Scott

From: Kristopher L. Koster <kris.koster@cmsenergy.com>
Sent: Tuesday, January 24, 2023 8:52 AM
To: Torvik, Scott (TAES) <scott.torvik@toshiba.com>; Roman Cline <Roman_Cline@hotmail.com>; Cline, Roman (TAES) <Roman.Cline@toshiba.com>
Cc: Scott A Coakley <scott.coakley@dteenergy.com>; Stella S. Carroll <STELLA.CARROLL@cmsenergy.com>; CHRISTOPHER C. WEARNE <CHRISTOPHER.WEARNE@cmsenergy.com>; Andrea S. Jendrusina <Andrea.Jendrusina@cmsenergy.com>; JASON R. DURAND <JASON.DURAND@cmsenergy.com>; Jerome Kostielney <Jerome.Kostielney@cmsenergy.com>; Michael W. Judd 1 <Michael.W.Judd@cmsenergy.com>; Chad L. Whitman <Chad.Whitman@cmsenergy.com>; ADAM C. GREENE <ADAM.GREENE@cmsenergy.com>; Dustin J. Daggett <Dustin.Daggett@cmsenergy.com>
Subject: 2023 Spring Outage Schedule and TAES Work Plans
Importance: High

Hi Scott / Roman,

We are working toward finalization of outage plans for the spring outages and require input from TAES as to what (if any) work TAES proposes to perform.

We have assembled a framework schedule for further development and addition by TAES for the LPS transformer bank outages scheduled for this spring, attached.

TAES can find the Primavera P6 schedule in Loadspring where the previous 2022 Fall Outage Schedule was prepared and managed by TAES last fall under the project WBS named LPS – Overhaul – 6th Unit.

The Project ID of the P6 project is LPS_2023_SpMainOut.

The Project Name is LPS 2023 Spring Maintenance Outages - DRAFT

The draft schedule also has a placeholder for additional items to be added to each unit's outages in support of TAES' NCR-related inspections and/or (Owner-approved) plans for corrective work. The expectation for TAES' schedule content and quality are similar to last year (as previously explained in the attached correspondence). I have summarized this below.

Corrective work plans to address defective work/NCRs must be prepared and approved by the Owner. In the event that TAES has not yet developed, submitted to the Owner for review, and received approval by the Owner of such plan(s), please perform the following in the P6 schedule which must comply with applicable milestones/deadlines associated with the unit that the work will be performed on:

- Add the activities (and logic) to the P6 schedule to identify TAES' intent to perform the scope prior to the scope freeze date.
- Add appropriate detail (and logic / resources) to the P6 schedule supporting the physical work in accordance with the draft and/or approved corrective work plans. Final work activities must reflect the approved plan and be updated prior to the deadline identified below.
- For corrective work plans which are not yet approved, add activities (and logic) to the P6 schedule which define corrective work plan development and submittal and Owner review/approval. Prepare corrective work plans in an expeditious manner and submit by TAES to the Owner for review. TAES' plans for the preparation of the plans must account for the contractual review duration (minimum of 21 days) and should consider additional revisions to address comments from the Owner. Requests for the Owner to expedite reviews may be considered but are not guaranteed.
- Add activities and logic to the P6 schedule (by supplier and by lead time/delivery date) for any material procurement to support the outage needs.

All plans must be approved at least 1 month prior to the outage start date, or the same date for which all materials must be onsite to support the work, unless an exception is otherwise requested in writing by TAES and granted by the Owner in writing, which remains at the sole discretion of the Owner.

I want to highlight a few key dates for TAES' awareness and strict compliance. For clarity, we are willing to discuss requested adjustments to these deadlines, but we reserve the right to decline requested adjustments.

- **Unit 1 Outage Work Window 4/5/2023 through 4/19/2023**
Unit 2 Outage Work Window 4/4/2023 through 4/18/2023
 - **Work scope freeze deadline of 1/27/2023 – need all scopes of work identified by addition of at least 1 schedule activity by this date.** Further P6 schedule detail to fully define the work steps and coordination reflected in the approved work plan may be added to the schedule through 3/3/2023.
 - Form 876 Working Clearance Request submittal deadline of 2/10/2023
 - All materials onsite to support work by 3/3/2023 [for clarity, this is not located at Toshiba's warehouse, but onsite]
 - We need confirmation of wicket gate position to support TAES' installation of the draft tube platforms by 3/20/2023
 - All personnel taking Working Clearance trained no later than 3/3/2023 [not including workers who will sign onto a 341]
- **Unit 3 Outage Work Window 4/26/2023 through 5/10/2023**
Unit 4 Outage Work Window 4/25/2023 through 5/9/2023
 - **Work scope freeze deadline of 2/17/2023 – need all scopes of work identified by addition of at least 1 schedule activity by this date.** Further P6 schedule detail to fully define the work steps and coordination reflected in the approved work plan may be added to the schedule through 3/24/2023.
 - Form 876 Working Clearance Request submittal deadline of 3/3/2023
 - All materials onsite to support work by 3/24/2023 [for clarity, this is not located at Toshiba's warehouse, but onsite]

We need confirmation of wicket gate position to support TAES' installation of the draft tube platforms by 4/10/2023

- All personnel taking Working Clearance trained no later than 3/24/2023 [not including workers who will sign onto a 341]

Unit 5 Outage Work Window 5/16/2023 through 5/30/2023

Unit 6 Outage Work Window 5/17/2023 through 5/31/2023

- **Work scope freeze deadline of 3/10/2023 – need all scopes of work identified by addition of at least 1 schedule activity by this date.** Further P6 schedule detail to fully define the work steps and coordination reflected in the approved work plan may be added to the schedule through 4/14/2023.
- Form 876 Working Clearance Request submittal deadline of 3/24/2023
- All materials onsite to support work by 4/14/2023 [for clarity, this is not located at Toshiba's warehouse, but onsite]
- We need confirmation of wicket gate position to support TAES' installation of the draft tube platforms by 5/1/2023
- All personnel taking Working Clearance trained no later than 4/14/2023 [not including workers who will sign onto a 341]

Finally, we again remind TAES of the many outstanding NCRs requiring TAES to provide proposed plans to resolve defective work across the project. We have stated many times that TAES must supply a plan and a schedule for these items to the Owner for approval that is inclusive of engineering, procurement, construction, and post maintenance testing activities for review. TAES must also perform all work necessary to correct the non-conformance once approved. If TAES does not provide such plans and detailed schedules promptly in a manner sufficient to achieve approval by the Owner to fully remedy these outstanding issues, the Owner will have no choice but to consider the inaction or failure to properly address the issues as refusal to complete the corrective work and the Owner will take steps to protect its rights. This includes, for example, the Owner's need to replace wicket gate seals in some or all units in 2023 according to recommendations provided by the OEM (TAES' subcontractor) if TAES does not provide a detailed plan as requested. In short, the Owner cannot wait indefinitely for TAES to propose and obtain approval for solutions designed to remedy its defective work as explained in many outstanding NCRs.

Sincerely,

Kris Koster

Project Manager

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